

**UNITED STATES OF AMERICA  
BEFORE  
THE NATIONAL LABOR RELATIONS BOARD**

AFP SPECIALTIES, INC.,  
Employer,

SHERYL L. BECKMAN,  
Petitioner,

ROAD SPRINKLER FITTERS  
LOCAL UNION NO. 669, U.A., AFL-CIO,  
Union,  
and  
NATIONAL FIRE SPRINKLER ASS'N, INC.  
Involved Party.

NLRB Case No. 07-RD-187706

**REQUEST FOR EXPEDITED REVIEW OF THE REGIONAL DIRECTOR'S  
DECISION AND STAY OF ELECTION BY SPRINKLER FITTERS LOCAL 669**

Pursuant to §10267 of the NLRB Rules & Regulations, Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO ("Local 669" or "the Union") submits this Request for Review of the Regional Director's Decision and Direction of Election ("Decision") dated January 11, 2017. As we show below, the Regional Director's decision is contrary to the undisputed and well documented facts, and contrary as well to settled NLRB precedent. Further, the Regional Director adopted legal arguments by AFP Specialties, Inc. ("AFP" or "the Employer") which were not advanced in the Employer's Statement of Position, in violation of §102.66(d) of the NLRB's Rules & Regulations, and precluded as well by the parties' subsequent Stipulation.<sup>1</sup>

Because the Regional Director's erroneous decision undermines the stability of a national multi-employer bargaining unit that has existed since at least 1954, the Union requests that the Board give this request expedited review, and that the election be stayed pending the NLRB's decision.

<sup>1</sup>References to the transcript of the hearing in this matter are cited as "(Tr. \_\_);" Exhibits are cited as "G.C. Exh. \_\_." Copies of the exhibits cited are enclosed herewith.

### THE UNDISPUTED FACTS

For over sixty (60) years, there has been a national, multi-employer bargaining unit covering forty-eight (48) states and the District of Columbia, inclusive of contractors engaged in the installation and maintenance of fire protection systems and represented by the National Fire Sprinkler Association ("NFSA"), and sprinkler fitters represented by Local 669. Jt. Exh.5 (Case No. 5-RC-1467 certifying Local 669 as the NLRA §9(a) representative of the national, multi-employer unit); Jt. Exh.3 at p. 4 (current national agreement restating the Union's §9(a) status).<sup>2</sup>

Some signatory contractors elect to bargain individually, outside the Local 669/NFSA multi-employer unit, and of those many sign so-called assent and interim agreements which adopt the terms of the existing NFSA national agreement. Jt. Exh. 6 (AFP Assent and Interim agreement (3/25/10) confirming the Union's status as the NLRA Section 9(a) representative of its employees); Union Exh. 2 (AFP §9(a) recognition agreement (5/06/05) dating back eleven (11) years).

In November of 2011, AFP entered into a settlement agreement (Jt. Exh. 2) by which it agreed to remedy its failure to make over \$300,000 in unpaid fringe benefit contributions owed to the National Automatic Sprinkler Industry ("NASI") benefit funds, in violation of the AFP/Local 669 collective bargaining agreement, by making periodic payments until November of 2016. Jt. Exh. 7, para. 2 (Stipulation). As a condition of that settlement agreement, AFP also agreed to designate the NFSA as its multi-employer bargaining representative for at least the duration of the settlement. Jt. Exh. 2, para. 12.

---

<sup>2</sup> The Regional Director should have taken judicial notice of the NLRB's decision Case No. 5-RC-1467 (1954) certifying Local 669 as the NLRA §9(a) representative of the employees in the national NFSA bargaining unit. *E.g., Meat Packers Int'l*, 230 NLRB 222, 227 (1977).

Pursuant to its 2011 designation of the NFSA as its multi-employer bargaining unit representative, AFP has continued to adhere to the terms of the 2010-13 and 2013-16 NFSA/Local 669 national multi-employer agreements without signing any separate assent and interim or other agreements establishing its obligation to do so. NLRB Exh. 2 (Stipulation), para. 6.

The most recent national multi-employer bargaining agreement between the NFSA and Local 669 became effective April 1, 2016, and AFP has continued to make settlement payments during its term. Jt. Exh. 7, para. 5 (Stipulation). AFP never made any attempt to revoke its designation of the NFSA as its multi-employer bargaining representative before the negotiation of the current agreement, or at any other time, and has continued to adhere to the terms of the current national agreement. Jt. Exh. 4.

There is no room for doubt that the foregoing, well-documented facts are undisputed: the Employer's Statement of Position, filed pursuant to the requirements of §102.66(d) of the NLRB's Rules & Regulations, concedes AFP's status as within "a multi-employer scenario" and that "[a] decade or so ago the Company 'voluntarily recognized' the union without an election." Jt. Exh. 1 (Nov. 14, 2016). AFP's Statement of Position also acknowledged that it was bound to the settlement agreement and that it had only recently satisfied its obligations under the settlement agreement, during the term of the current NFSA/Local 669 national agreement. *Id.*

The legal argument in AFP's Statement of Position was basically that the current national agreement between the NFSA and Local 669 to which it was bound should not bar the RD election because the national agreement had a five (5) year term. *Id.*

It was and continues to be the Union's position that the Petition should be dismissed because it is precluded by the contract bar of the current NFSA/Local 669 agreement to which

AFP is admittedly bound, and because, by virtue of its designation of the NFSA as its bargaining representative in the national, multi-employer unit, AFP is part of a multi-employer bargaining unit and the single employer unit described in the Petition is erroneous and does not exist.

NLRB Exh. 4.

On December 20, 2016, after the close of the record, the parties entered into a Stipulation, in lieu of a second hearing (Jt. Exh. 7), which added several exhibits and included the following term:

The parties waive the right to make any additional argument, statement, or introduce additional testimony or evidence to the record pursuant to the Regional Director's Order dated December 15, 2016, that is not contained herein. (Emphasis added).<sup>3</sup>

Notwithstanding this stipulation, AFP thereafter submitted a Supplemental Brief to the Region which contained new argument not made in the Employer's Statement of Position. The Union moved to strike the submission on the basis that it was barred by §102.66 of the NLRB Rules & Regulations and by the Stipulation by which the Employer "waive[d] any right to make additional argument..." The Regional Director purported to reject AFP's brief (Decision at p.3) but then adopted AFP's newly revised arguments.

#### **THE REGIONAL DIRECTOR'S DECISION**

The Regional Director concluded that the current national multi-employer agreement between the NFSA and Local 669, to which AFP was admittedly bound by virtue of its continuing designation of the NFSA, was not a bar to an election because

the Union has not satisfied its burden that it had majority status at any time the Employer was a party to or obligated under a collective bargaining agreement including with regard to the 2016 successor agreement between the Union and the [NFSA]. Decision at pp. 2-3.

---

<sup>3</sup> The stipulation was binding upon all of the parties thereto. *E.g.*, *Woodland Clinic*, 331 NLRB 735, 741 (2000); *Kroger Co.*, 211 NLRB 363, 364 (1974).